STATE OF MICHIGAN

COURT OF APPEALS

REMBRANDT CONSTRUCTION, INC., Plaintiff-Appellee,	UNPUBLISHED November 21, 2006
v	No. 270577 Macomb Circuit Court
BUTLER MANUFACTURING COMPANY, d/b/a NATURALITE SKYLIGHT SYSTEMS, Defendant-Appellant.	LC No. 05-001699-CZ

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals by leave granted an order denying defendant's motion for summary disposition. We reverse.

This action arises out of plaintiff's construction of a new home for a family in Grosse Pointe Shores, Michigan. Plaintiff purchased four skylights from defendant for installation in the new construction. Defendant shipped the skylights on February 18, 2000, and a subcontractor installed them in the spring of 2000. Reportedly, the homeowners noted a water incursion problem in certain areas of the residence in late winter/early spring 2001. Plaintiff was contacted by the homeowner and undertook an extensive investigation to determine the source of the water leakage. It was not until 2003 that plaintiff ascertained that leakage was attributable to the installed skylights. Plaintiff contacted defendant who recommended changes to the flashing for the skylights. Defendant recommended this correction following testing of the skylights, which resulted in defendant's assertion that the units were not actually defective and that the leakage was attributable to "an environmental condition" pertaining to snow accumulation that "does not allow the condensation to weep out." Ultimately, plaintiff had the skylights removed from the residence and replaced them with alternative models at a cost in excess of $27,500. Plaintiff initiated this action for breach of contract, breach of express and implied warranties and fraud on April 28, 2005.

Defendant sought summary disposition, asserting plaintiff's claims were barred by the relevant four-year statute of limitations contained in MCL 440.2725(1). Defendant asserted the skylights constituted "goods" as defined by the Michigan Uniform Commercial Code (UCC), MCL 440.1101 *et seq.* Defendant further asserted that plaintiff's ancillary claims, sounding in tort and fraud, were precluded by the economic loss doctrine. In response, plaintiff contended its claims could not accrue until the source of the water leakage had been determined and it had

obtained sufficient information to initiate its claim. Although denied by defendant, plaintiff further asserted defendant's representatives had falsely represented that its products were suitable for use in cold, northern climates and that a five-year warranty had been provided for the skylights. The trial court denied summary disposition, determining that the applicable limitations period did not begin to run upon delivery of the skylights, but rather accrued upon discovery that the skylights were defective. We review de novo a trial court's decision on a motion for summary disposition. *Quest Diagnostics, Inc v MCI WorldCom, Inc*, 254 Mich App 372, 375; 656 NW2d 858 (2002). This Court also reviews motions for summary disposition under MCR 2.116(C)(7) de novo. *Grimes v Michigan Dep't of Transportation*, 475 Mich 72, 76; 715 NW2d 275 (2006).

Defendant first asserts the trial court erred in applying a discovery rule to determine accrual of plaintiff's claim. The parties do not appear to dispute that the skylights involved in this matter constitute goods, within the contemplation of the UCC. Specifically, MCL 440.2105(1) defines "goods" to encompass "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities (article 8) and things in action." In accordance with this transaction falling under the purview of the UCC, MCL 440.2725 provides:

> (1) An action for breach of any contract for sale must be commenced within 4 years after the cause of action accrued. By the original agreement the parties may reduce the period of limitation to not less than 1 year but may not extend it.
>
> (2) A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made, except that where a warranty explicitly extends to future performance of the goods and discovery of the breach must await the time of such performance the cause of action accrues when the breach is or should have been discovered.

The imposition of a discovery rule by the trial court for accrual of plaintiff's claim is directly contrary to both the clear and unambiguous language of the applicable statute and case law. Without a warranty extending to the future performance of the subject goods, a cause of action has been determined to accrue upon tender of delivery. *Baker v DEC Int'l*, 458 Mich 247, 251; 580 NW2d 894 (1998); *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002). In addition, the Michigan Supreme Court has specifically determined that the UCC "recognizes no discovery rule." *Neibarger v Universal Coop, Inc*, 439 Mich 512, 515-516; 486 NW2d 612 (1992). Since there is no dispute that delivery of the skylights was tendered on February 18, 2000, and that plaintiff's complaint was not filed until 2005, the trial court erred in failing to grant summary disposition based on initiation of this action outside the four-year statute of limitations.

Defendant further contends that the trial court erred in failing to apply the economic loss doctrine to preclude plaintiff's assertion of fraud. "The economic-loss doctrine is a judicially created doctrine that bars all tort remedies where the suit is between an aggrieved buyer and a nonperformance seller, the injury consists of damage to the goods themselves, and the only losses alleged are economic." *Sullivan Industries, Inc v Double Seal Glass Co, Inc*, 192 Mich

App 333, 339; 480 NW2d 623 (1992). The economic loss doctrine was formally adopted by the Michigan Supreme Court in *Neibarger, supra,* pp 520-521, wherein it explained:

> "'[w]here a purchaser's expectations in a sale are frustrated because the product he bought is not working properly, his remedy is said to be in contract alone, for he has suffered only "economic losses.'" This doctrine hinges on a distinction drawn between transactions involving the sale of goods for commercial purposes where economic expectations are protected by commercial and contract law, and those involving the sale of defective products to individual consumers who are injured in a manner which has traditionally been remedied by resort to the law of torts. [*Id.* (footnotes and citations omitted).]

Plaintiff contends that it incurred damage to its business reputation because of the defective skylights, which impacted its "reputation as a contractor of high-end homes." However, plaintiff fails to come forward with any evidence regarding this assertion. This Court will not search a record for factual support of a claim. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004). Hence, the only damages recoverable within this action are economic and, therefore, "do not fall outside the ambit of the economic loss doctrine." *Citizens Ins Co v Osmose,* 231 Mich App 40, 47; 585 NW2d 314 (1998).

In addition, plaintiff contended that defendant's sales representative falsely represented the suitability of defendant's skylights for placement in the residence being constructed. Although defendant contests the provision of any such representations by its agent to plaintiff, this factual dispute is ultimately irrelevant because this claim is also precluded by the economic loss doctrine. This Court has determined that misrepresentations, such as those characterized by plaintiff, "relate to the breaching party's performance of the contract and do not give rise to an independent cause of action in tort." *Huron Tool and Engineering Co v Precision Consulting Serv, Inc*, 209 Mich App 365, 373; 532 NW2d 541 (1995).

Based on our determination that the trial court erred in failing to grant summary disposition to defendant based on expiration of the statute of limitations and economic loss doctrine, we need not address the warranty issues raised by defendant as an alternative basis for dismissal.

Reversed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot